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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 261

WILLIAM C. BARNETT,

Petitioner,

vs.

ESTHER E. JENKINS

PETITION FOR A WRIT OF CERTIORARI TO THE SAINT LOUIS COURT OF APPEALS OF THE STATE OF MISSOURI

WILLIAM C. BARNETT,
Pro Se.

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No. 261

WILLIAM C. BARNETT,

Petitioner,

vs.

ESTHER E. JENKINS,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE ST. LOUIS COURT OF APPEALS

Petitioner prays that a writ of certiorari issue to review the judgment of the St. Louis Court of Appeals, which became final on March 10, 1952.

Opinion Below

The opinion of the St. Louis Court of Appeals, reported in 243 S. W. 2d 804, is attached.

Jurisdiction

The judgment of the St. Louis Court of Appeals, entered on November 20, 1951 and modified on December 21, 1951, became final on March 10, 1952, when the Supreme Court of Missouri overruled petitioner's application for leave to file motion to reconsider his application for transfer. The

jurisdiction of this Court is invoked under 28 U. S. C. 1257(3). It is requested that the writ be directed to the St. Louis Court of Appeals, an intermediate appellate court, rather than the Missouri Supreme Court, because the latter denied petitioner's application to transfer, thereby declining to assume jurisdiction in the matter. In order that there might be no question about the finality of the judgment, petitioner filed an application for leave to file a motion to reconsider his application to transfer, which was also denied by the State Supreme Court. The decision of the St. Louis Court of Appeals is therefore a final judgment in the highest court of this State in which a decision could be had involving a right, privilege or immunity, specially set up or claimed by petitioner under the Constitution of the United States.

Question Presented

The question presented is whether a judgment rendered by a State Circuit Court in excess of the amount claimed and stated in the execution served on petitioner as garnishee, is a violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, as depriving petitioner of property without due process of law. This question was first raised by petitioner in the Circuit Court in his motion to amend judgment and opinion, and motion for a new trial attacking the interlocutory judgment, and also in his motion to amend the final judgment of the Circuit Court in the following language: "The Court was without jurisdiction to render said judgment" (R. 24, 26); next in his motion for a rehearing or to transfer to the Supreme Court, filed in the Court of Appeals, as follows: "By sustaining a judgment for an amount greater than that sought in the process served on appellant, this Court is attempting to deprive him of his property without due

process of law contrary to Amendment XIV of the Constitution of the United States" (R. 35); again, in his application for transfer to the Supreme Court of Missouri, filed in that Court, stating "The opinion is in conflict with Amendment XIV of the Constitution of the United States" (R. 41); and in his suggestions in support of said application (R. 45); and finally, in his application for leave to file a motion to reconsider, in which he stated that he had been aggrieved by a decision which was repugnant to the Fourteenth Amendment to the Constitution of the United States (R. 47, 48).

Statement

The facts are undisputed. Respondent's former husband, Lawrence J. Jenkins, employed petitioner as his attorney to prosecute a claim for personal injuries under the Federal Employers' Liability Act. Suit was filed and subsequently settled for $5,000.00 less $1,059.50 previously paid Jenkins as sick benefits. A draft for $3,940.50 payable to the order of Lawrence J. Jenkins and William C. Barnett, his attorney, was delivered to petitioner, and immediately thereafter a writ of garnishment was served on him. A special execution had been issued the same day by the Circuit Court of St. Louis County in favor of respondent as follows:

> Debt and Damage, $1,955.00
> Interest at 6% . . .

The execution was issued pursuant to an application filed by respondent, in which she stated that she was entitled to $1,955.00 under a divorce decree awarding her $75.00 a month to be paid by Jenkins for the support of their two minor children.

In due course respondent filed interrogatories and petitioner answered denying that he had any property belong-

ing to the debtor. Respondent replied that the debtor owed $1,955.00 for support money and that petitioner held the draft in question, and prayed that the debt be satisfied out of the draft.

The Court found that petitioner was indebted to Jenkins in the sum of $1,970.25 and ordered him to pay said sum into Court. After an unavailing motion to amend the judgment and motion for a new trial, judgment was rendered against petitioner for $1,970.25. After his second motion to amend the judgment was overruled, petitioner appealed to the St. Louis Court of Appeals, which Court affirmed the judgment. Petitioner duly filed his motion for a rehearing or to transfer to the Supreme Court. Upon the denial of that motion he filed in the State Supreme Court an application for transfer to that court, and when that application was denied he filed an application for leave to file a motion to reconsider, which was also denied. In each motion and application petitioner attacked the validity of the judgment on the ground that it was unlawful for the Court to render a judgment in excess of the amount claimed. Having exhausted all remedies available to him in the State Courts, petitioner applies to this Court to review and determine the validity of the judgment.

Specification of Error to Be Urged

The St. Louis Court of Appeals erred in affirming the judgment of the Circuit Court for a sum in excess of the amount claimed in that the judgment deprived petitioner of property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Reasons for Granting the Writ

1. The decision of the Court below is directly in conflict with the due process clause of the Fourteenth Amendment, and a long line of cases, both State and Federal, holding that any judgment in excess of the amount sought to be recovered is invalid and must be reversed. A few of these cases are cited below.

2. Although the amount involved is not great, the question presented is of vital importance to the general public, and especially to the Bar, in the administration of justice. The adjudication of the question by this Court is plainly in the public interest, because a judgment of this nature, if permitted to stand, will serve as a precedent for a court to render judgment against an original defendant or garnishee in any amount, regardless of the amount claimed, thereby depriving such litigants of their constitutional guarantee of due process of law.

3. The decision of the Court below is clearly in error in upholding the judgment of the Circuit Court and in refusing to recognize petitioner's constitutional rights under the Fourteenth Amendment.

Authorities and Argument

A judgment in excess of the amount claimed is invalid and must be set aside.

Williams v. *Chicago Milling & Lumber Corp.*, 59 F. 2d 918, 922;
Brought v. *Cherokee Nation*, 129 F. 192, 195;
Brown v. *Minngas Co.*, 51 F. Supp. 363, 372;
Hogan v. *Taylor*, Fed. Cas. No. 6584(a), Hemp. 20;
State ex rel. Snyder v. *Davidson*, 87 Mo. 683;
Moore v. *Dixon*, 50 Mo. 424;
Pope v. *Salsman*, 35 Mo. 362;

Cox v. *City of St. Louis,* 11 Mo. 431;
Maupin v. *Triplett,* 5 Mo. 422;
Hayton v. *Hope,* 3 Mo. 53;
Carr & Co. v. *Edwards,* 1 Mo. 137.

The decisions of all appellate courts, including those of the Missouri Supreme Court since the earliest reported cases, and of the Federal Courts, have held that the amount stated in the pleadings is the measure of the maximum possible recovery and that any amount, no matter how small, in excess of the claim constitutes error apparent on the face of the record, for which the judgment must be reversed. The basis for these rulings is quite obvious: A judgment in excess of the relief asked has nothing in the pleadings or the record to support it, is altogether erroneous and void, and must be reversed in its entirety.

In *Brought* v. *Cherokee Nation,* 129 F. 192, 195, the Court held that the judgment must conform to the pleadings, and that any judgment for a sum greater than that alleged and prayed for can not be sustained even though supported by the evidence. The Court said that the objection to the judgment was well taken because the judgment had been rendered in a sum greater than that claimed by the plaintiff in his complaint, and the error being apparent on the face of the record, the judgment must be reversed and annulled outright.

It is manifest without further argument that when respondent applied for an execution in the sum of $1,955.00, and an execution was issued and served on petitioner in that amount, the Court was totally without authority to render a judgment for $1,970.25 or any other amount greater than the amount demanded. There was no attempt made by the Circuit Court to justify its action by showing that the excessive amount represented interest or any other

lawful claim. If a trial court is permitted to disregard the amount stated in the pleadings, a garnishee will be afforded no protection whatever. It is highly essential that an employer in paying his help and a lawyer in settling with his client, and in fact anyone subject to garnishment, know the exact amount claimed, and be protected by the law in witholding only that amount; otherwise every person handling another's money in a commercial transaction will be subject to double jeopardy, first, by the judgment debtor if he should withhold too much, and again, by the creditor if he should withhold too little. This situation is clearly within the language and intent of the Fourteenth Amendment, and should not be sanctioned by this Court. Petitioner's contention is lightly brushed aside in one sentence at the conclusion of the opinion by saying that the judgment included interest on the debt. That may be the opinion of the Court of Appeals, but it was not the judgment rendered by the Circuit Court.

Conclusion

For the foregoing reasons petitioner prays this Court to direct a writ of certiorari to the St. Louis Court of Appeals so that the decision of that Court may be reviewed and determined.

Respectfully submitted,

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